COPY

RECEIVED
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 190

THE CURTIS PUBLISHING COMPANY, *Petitioner*

v.

HYMAN H. VAN DAM, *Respondent*

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EDWIN N. SCOTT
HYMAN SHOLTZ
Counsel for Respondent

1730 K St., N.W.

INDEX

	Page
Opinions below	1
Question presented	2
Statement	2
Reasons for refusing writ	2–4

CITATIONS

CASES:

Barr v. Matteo, 360 U.S. 564	4
Curtis Pub. Co. v. Vaughan, 278 F. 2d 23	3, 4
Del Vecchio v. Bowers, 296 U.S. 280	3
Dickins v. International Brotherhood, 171 F. 2d 21	3
District of Columbia v. Murphy, 314 U.S. 441	4
District of Columbia v. Pace, 320 U.S. 698	3
Hughes v. Wash. Daily News, 193 F. 2d 922	3
Sweeney v. Patterson, 128 F. 2d 457	3
White v. Nicholls, 44 U.S. 267, 287	4

TREATISES:

49 Columbia Law Rev. 875, 896, 897	4
Harper and James, Torts, 432-433	3
Restatement, Torts, Sec. 611	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 196

THE CURTIS PUBLISHING COMPANY, *Petitioner*

v.

HARRY H. VAUGHAN, *Respondent*

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Respondent, Harry H. Vaughan, by and through his counsel, Byron N. Scott and Hyman Smollar, opposes the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit as petitioned for by counsel on behalf of the Curtis Publishing Company.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported in 278 F. 2d at pages 23 to 33.

QUESTION PRESENTED

Whether, in a libel action, the defense of qualified privilege is available, under the common law of the District of Columbia, to the publisher of a weekly magazine who, in a defamatory manner and without publishing any of the evidence, states his appraisal of the results of evidence which had been adduced in a Senate Committee hearing concerning the conduct in office of a high public official who had been out of public life for three and one-half years at the time of the publication of the offending statement.

STATEMENT

This "Opposition", for the purpose of the argument, accepts the "Statement" in the Petition, but with the following comment:

Petitioner's characterization of the dissent (p. 4) is not a statement of fact but an interpretation by petitioner of a remark of the dissenting Judge. The opinion stated "we refused to pass upon whether or not the statement (in Sweeney) was privileged" (Petition, pp. 7, 14). The dissent turned on the dissenter's view that the question of whether readers of the caption could or would think that the statement charged "crime, corruption, gross immortality or gross incompetence" should not have gone to the jury. It must be borne in mind that the appeal was taken from a denial of a motion for judgment notwithstanding the verdict.

REASONS FOR REFUSING THE WRIT

1. The decision declares only the common law of the District of Columbia. At the outset of the trial, the District Judge caused the record to show "that by stipulation of counsel the damage in this case is limited

to the confines of the District of Columbia; and . . . District of Columbia law will govern", (*Curtis Publishing Co.* v. *Vaughan*, 278 F. 2d 23, 25 n. 2; Petition, p. 14). This being true the writ should be refused on the authority of *Del Vecchio* v. *Bowers*, 296 U.S. 280, 285; *District of Columbia* v. *Pace*, 320 U.S. 698, 702.

2. The decision does not conflict with previous decisions of the Court of Appeals for the District of Columbia in the manner necessary to sustain a petition. The Court carefully distinguished the cases referred to in the Petition: *Sweeney* v. *Patterson*, 128 F. 2d 457 (1942) on the ground that in *Sweeney* there was "no charge of crime, corruption, gross immorality or gross incompetence" as in the instant case; and *Dickins* v. *International Brotherhood*, 171 F. 2d 21 (1948) on the ground that in the instant case the author of the libel was not writing "under the compulsion of a legal or moral duty, or for the protection of his own rights or interests", as had been the case in *Dickins*, where Dickins had first attacked the Union and the Union had replied. *Vaughan* was decided in 1960; *Dickins* in 1948; and *Sweeney* in 1942.

3. The instant decision does not confuse the law of the District of Columbia on libel. It remains, as specifically stated by the court, "well settled that the publication of any statement by a newspaper made upon its own authority, and not purporting to be a report of official proceedings or statements is not privileged . . . The publication constitutes a charge by the person uttering it, and he is responsible therefor" (*Citing Hughes* v. *Washington Daily News*, 193 F. 2d 922; Harper and James, Torts, 432-33; Restatement, Torts Sec. 611 and Comment (d), in footnotes 17 and

20), (*Curtis Publ. Co.* v. *Vaughan, supra,* at pages 10 and 11; Petition, p. 21).

4. The instant decision does not conflict with the principle of the ruling of this Court in *Barr* v. *Matteo*, 360 U.S. 564, where the facts were entirely different and the decision was restricted to the peculiar facts of the case. In *Barr*, a public official was speaking. In the instant case an unknown "staff writer" of the Saturday Evening Post was speaking, *Curtis Publishing Co.* v. *Vaughan, supra,* at page 5 of the petition. The opinion of the Court in the instant case follows the ruling of this Court in *White* v. *Nicholls*, 44 U.S. 266, 287, wherein it was said "A publication of the result of evidence is not privileged; the evidence itself must be published."

5. The decision in the instant case can have no national repercussions; nor will it necessarily constitute a precedent of national application. The decision in the instant case is of no importance to the administration of the laws, as in *District of Columbia* v. *Murphy*, 314 U.S. 441, which was concerned with the interpretation of the District of Columbia Income Tax Act, making "domicile" the fulcrum of the income tax, and omitting to set forth a definition of the word. The decision, moreover, is in line with the clear weight of judicial authority (Noel, *Defamation of Public Officers and Candidates*, 49 Colum. L. Rev. 875, 896, 897).

For the foregoing reasons and for the reason that petitioner has not made out a case justifying the issuance of the writ, the petition should be denied.

Respectfully submitted,

BYRON N. SCOTT

HYMAN SMOLLAR

Counsel for Respondent

July, 1960.